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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,511	05/22/2001	Denis John Albert	31386	8617

23589 7590 11/04/2002

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EXAMINER

ALVO, MARC S

ART UNIT 1731

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/763,511

Applicant(s)

ALBERT ET AL.

Examiner

Art Unit

Steve Alvo

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed if the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the normal statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 15 August 2002.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-23 and 25-31 is/are pending in the application.

4a) Of the above claim(s) 1-8, 13-23, 25-28 and 31 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 9, 10, 12 and 30 is/are rejected.

7)  Claim(s) 11 and 29 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

6)  Other: \_\_\_\_\_

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over BEALL et al '308 or BEALL et al '728.

The claimed sound reads on the ultrasonic (ultrasound) waves of BEALL et al '308 or BEALL et al '728 as sound waves. Ultrasonic waves are sound waves outside the human range of hearing. If the ultrasound waves of BEALL et al '308 or BEALL et al '728 are not thought to be sound waves then the alternativeness of using sound (sonic) and ultrasound waves on wood is taught by BEALL et al '308 or BEALL et al '728 (see BEALL et al '728, column 3, lines 16-25 or BEALL et al '308, column 3, lines 13-22).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-30 are rejected under 35 U.S.C. 103(a) as obvious over BEALL et al '308 or BEALL et al '728 with or without CHASE.

BEALL et al '308 or BEALL et al '728 teach sending sound waves (ultrasonic) waves through wood and measure the velocity of the sound waves passing through the wood and determines characteristics of the wood, e.g. dynamic strength (BEALL et al '728, col. 2, line 1 or BEALL et al '308, col. 2, lines 2-3), moisture content, internal knots and/or wood density (column 9, lines 15-16). CHASE teaches that the strength measurements of wood are related to the fiber length of the wood fibers. If BEALL et al '308 or BEALL et al '728 are not thought to teach assessing the fiber characteristics, e.g. fiber length, from the strength measurements of BEALL et al '308 or BEALL et al '728 then such would have been obvious from the teachings of CHASE. It would have been obvious to generate the noise by impact instead of the ultrasonic generator of BEALL et al '308 or BEALL et al '728 as BEALL et al '308 or BEALL et al '728 teaches that it is known to generate the sound by impact (BEALL et al '728, column 2, lines 25-32, or BEALL et al '308, column 2, lines 29-36).

Applicants' arguments have been considered but are not convincing as the properties of the wood, e.g. wood strength, are directly related to the properties of the individual fibers, which make up the wood. Wood composed of degraded or weakened fibers would result in a weaker wood. Wood composed of fibers having high strength would result in a stronger wood. If the wood is not held together by strong fibers the wood would break more easily. Applicant has chosen to broadly claim "fiber characteristics" without specifying specific characteristics, except for the "average fiber length" and the "strength". As set forth above the strength of the wood

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would be directly related to the strength of the fibers from which is made and thus claim 12 would have been obvious.

The art does not teach determining the average fiber length of wood fibers from a solid wood member.

Claims 11 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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**Non-Final Fax: (703) 872-9310      After-Final FAX: (703) 872-9311.**

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Any inquiry concerning this communication or earlier communications from the **primary examiner** should be directed to **Steve Alvo** whose telephone number is **(703) 308-2048**. The Examiner can normally be reached on Monday - Friday from **6:00 AM - 2:30 PM (EST)**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Steve Griffin, can be reached on 703-308-1164.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Group receptionist** whose telephone number is **703-308-0661**.

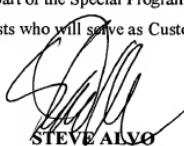
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MSA  
11/3/02



STEVE ALVO  
PRIMARY EXAMINER  
ART UNIT 1731